

**239/3 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.****CWP-12379-2021****Reserved on: 05.09.2023****Pronounced on: 22.09.2023**

HANSRAJ

.....Petitioner

Versus

STATE OF HARYANA AND ANR.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Argued by: Mr. Sandeep Sharma, Advocate
for the petitioner.Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur Manchanda, Advocate
Mr. Shivam Garg, Advocate
for HSIIDC.

SURESHWAR THAKUR, J.

1. The claim made in the instant writ petition is for a mandamus being made upon the respondents concerned, to, in terms of the policy dated 14.09.2018 of the Haryana Government, thereby, the petition lands be released from acquisition, thus, on theirs becoming un-essential or unviable for being used for the requisite public purpose.

2. The learned counsel appearing for the petitioner has forcefully contended, by planking submissions, on the mandate of Section 101 A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

(hereinafter for short refer to as the 'Act of 2013') as became incorporated in the 'Act of 2013', through Haryana Act No. 21 of 2018, provisions whereof are extracted hereinafter, that the petition lands are un-essential or unviable for the relevant public purpose. Therefore, he has argued that the petition lands, irrespective of the earlier launched acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894') thus becoming fully terminated, rather are un-essential or are unviable for being used for the relevant public purpose, thereby they are yet available for becoming released from acquisition.

“101A. Power to denotify land.- When any public purpose, for which the land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894) becomes unviable or non-essential, the State Government shall be at liberty to denotify such land, on such terms, as considered expedient by the State Government, including the payment of compensation on account of damages, if any, sustained by the land owner due to such acquisition:

Provided that where a part of the acquired land has been utilized or any encumbrances have been created, the landowner may be compensated by providing alternative land alongwith payment of damages, if any, as determined by the State Government.”

3. It has been averred in the writ petition, that the petitioner is owner of the disputed lands, whereons, a residential house and smadhi exists. The petitioner is also doing diary farming on the petition lands. After the issuances of notification(s) for acquisition, the petitioner has not received the compensation and is in physical possession of the property(ies). He is residing there alongwith his family. The Land Acquisition Collector has offered compensation after a period of 9

years to the petitioner.

4. It is further averred in the writ petition that in view of clause 7 of the policy dated 14.09.2018 of the Haryana Government, the acquired lands be released from acquisition. The relevant portion of the policy (supra) is extracted hereinafter.

7. The District Level Sub-Committee constituted under clause 5 or clause 6, as the case may be, shall while examining the opinion of the acquiring department consider the following issues:

(i) if the acquired land has become non-viable land or non-essential land

(ii) extent of payment of compensation, if any, to the land owner(s) on account of damages, if any, sustained by them due to acquisition of land.

(iii) extent of compensation by providing alternate land along with payment of damages, if any, in case of part utilization of acquired land or in case of any encumbrances created on/against the acquired land or part thereof.

Explanation: -

(1) Unviable land means the whole or part of the acquired land which has become unsuitable for utilization for the purpose for which it was acquired due to act of Nature, or increase in acquisition cost as a result of any reason including any enormous enhancement in compensation amount payable on such a land due to court orders, or material or drastic change in policy of the Government wherein such extenuating circumstances have emerged where in the opinion of the Government to be recorded with reasons, it would not be in public interest to continue with acquisition, or change in socio-economic and geographical factors in respect of the acquired land or for any other reasonable cause.

(2) Non-essential land means the whole or part of the acquired land which cannot be practically utilized for the purpose for which it was acquired to any of the reasons enumerated in explanation (1) or better alternatives have become available for the project and it is not possible to continue with any alternative public purpose in respect of acquired land.

5. The petitioner has also filed representation (Annexure P-3) before the authorities concerned seeking releasing of the land in view of the policy (supra).

6. It has been further averred in the writ petition that the respondents are acquiring very small pockets of land which exist adjacent to the private land owners. There is no proper planning and the acquisition has been carried out without any proper survey. There is un-acquired land surrounding this property and respondents cannot utilize this land in any manner. Thus, the petition lands be released from acquisition on being rendered unviable or un-essential.

Reasons for rejecting the submissions of the learned counsel for the petitioner.

7. The learned counsel appearing for the petitioner has planked his submission, on anvil of Section 101 A (supra) as well as, on anchor of clause 7 of the policy dated 14.09.2018 of the Haryana Government, but yet the said submission becomes completely unhinged, in the face of a specific contention existing in paragraph No. 10 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

“10. That as a result, the acquisition of about 2200 acres of land involved in these proceedings was dropped and accordingly, the DRO-cum-LAC, Gurugram, announced

the Award in respect of balance land measuring about 1128 acres on 21.04.2011. As per the information received from the DRO-cum-LAC, Gurugram, the land of the petitioner was acquired vide Award No. 3 dated 21.04.2011. It has further been informed that the petitioner has lifted the compensation for his remaining acquired land except the land comprising in khasra Nos. 13//17/1/2(2-13), 18/1(7-6) and 24/1/1(1-8) and has given an affidavit to the effect that he is not willing to lift the compensation for the said land and will also not claim the interest on compensation when he receives the compensation amount for the said land. A part shijra plan showing the land of the petitioner is annexed as Annexure R-1 for kind perusal of this Hon'ble Court.”

8. A reading of the said contents, does make graphic emergence(s), that the petitioner has received compensation of the petition lands, except for *khasra Nos. 13//17/1/2(2-13), 18/1(7-6) and 24/1/1(1-8)*.

9. Further, in the reply on affidavit, it is also revealed that the petitioner alongwith other co-sharers earlier filed CWP-4304-2021, for a mandamus being made upon the respondents concerned, to pay interest on compensation in lieu of the acquired land, through award dated 21.04.2011. The said petition was disposed of through an order made on 05.01.2022, with a direction to the District Revenue Officer-cum-Land Acquisition Collector, Gurugram, to decide the claim of the petitioners in accordance with law. In consequence, thereby the petitioner is not entitled to seek exemption(s) or release(s) of the acquired lands.

10. Further, on reading para No. 21, of the reply, on affidavit, it is revealed that the present land acquisition proceedings were under

status quo orders from 25.04.2011 till 02.12.2019, therefore, the State Government was not able to proceed further in the present land acquisition proceedings. Now, when the status quo orders have been vacated, thereby the implementing agency can proceed ahead with the planning of land.

11. Consequently, the counsel for the petitioner cannot argue, that the petition lands are either un-essential or unviable for facilitating the apposite public purpose nor he can well rest any argument premised, on the provisions of Section 101 A of the 'Act of 2013' or in view of the policy dated 14.09.2018. Contrarily, post valid termination of earlier launched acquisition proceedings under the 'Act of 1894', thereupon yet the retention, if any, of the petition lands, by the petitioner, especially when they evidently sub-serve the public purpose, thus is rather completely unlawful. The reason being that the above ground premised on anvil of Section 101 A of the 'Act of 2013' or upon, policy dated 14.09.2018, is completely capricious and also is arbitrary. The reason being that the statutory ingredients therein, appertaining to un-essentiality or unviability of the disputed lands, thus for facilitating the apposite public purpose, rather are to be tested, on anvil of objective contemplations, as made by the authority concerned, and since the above objective thereto contemplation, is but manifestative, that the petition lands are an integral component of the layout plans relating to the completion of the relevant public purpose. Therefore, the learned counsel for the petitioner has untenably planked the above argument, thus premised on the provisions of Section 101 A of the 'Act of 2013' and/or, upon, policy dated 14.09.2018.

12. Conspicuously upon vesting of ownership over the acquired lands, in the respondent concerned, thus happening on issuance(s) of notification(s) (supra), thereby when the State becomes absolute owner of the acquired lands. Resultantly the investment of complete or absolute ownership over the acquired lands in the respondent-State, thus makes it well empowered within the ambit of the verdict rendered by Hon'ble Apex Court in the case of ***“State of Kerala Vs. M.Bhaskaran Pillai”***, AIR 1997 SC 2703, even make sale of the acquired lands through public auction. Thus, in the event of it being not utilized, the exercisings of the above power by an absolute owner, rather is tenable, as thereby the auction monies as become fetched by the State of Haryana, thus would also result in theirs sub-serving some other public purpose(s). Therefore, except in a very rare or exceptional circumstances, inasmuch as, upon occurrence of *vis major* or upon exorbitant sums of compensation monies being determined, thus making their liquidations, to cause an onerous burden to the State exchequer, thus, thereby the statutory parameters of un-essentiality or unviability of retention of the acquired lands, may become adopted by the State of Haryana. However, the above exceptions are not available on the records of the case.

13. Conspicuously also when it has been stated by the learned Additional Advocate General, Haryana that withdrawal of the policy (supra) is under active consideration of the respondent and that very shortly the policy (supra) is likely to be re-called.

14. The further reason for rejecting the relief relating to the writ lands, thus becoming released from acquisition, becomes sparked

occur unequivocal echoings, that only owing to the interim orders, thus staying dis-possession of the petitioner from the acquired lands, that the physical possession of the lands remained with the petitioner. However, now since the interim orders have been vacated, therefore, the implementing agency can proceed with making plannings for thus subserving the requisite public purpose. Moreover, the petitioner is required to be forthwith handing over the physical possession of the acquired lands, thus to the respondent.

15. Moreover with further echoing being made therein, that the petitioner has already taken the compensation amount qua the land in question, except qua *khasra Nos. 13//17/1/2(2-13), 18/1(7-6) and 24/1/1(1-8)*, thereupon, when the assessed compensation amount, but obviously not only became tendered, but also became released to the petitioner thus, thereby the claim for release(s) or exemption of the petition lands from their acquisition, rather becomes completely irrelevant, nor the said relief for exemption or release(s) from acquisition, can be yet claimed from this Court.

16. Even though, there was stay against dis-possession of the petitioner from the petition lands, through an interim order made by this Court, yet the said deterrence made upon the respondents, from assuming possession, would not thus render the assumption of possession, on the writ lands by the respondent, thus through rapat possession, rather being inapt. The reason being that, the said mode of assumption of possession by the respondents over the acquired lands, thus becomes pronounced in the verdict ***'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos.***

assumption of possession over the acquired lands, thus by the acquiring authority, but irrespective of their being any stay against dis-possession of the petitioner, from the acquired lands, whereby the acquiring authority becomes deterred from assuming physical possession over the acquired lands. In consequence, physical possession of the petition lands be forthwith handed over by the petitioner to the respondent concerned.

17. Further, this Court earlier in case titled as '***The Press Employees and Friends Co-operative Group Housing Society Ltd. Vs. State of Haryana and Others***', 2023: PHHC:106793-DB, had in length dealt with similar issues as in the instant writ petition. The relevant paragraphs of the verdict (supra) are extracted hereinafter.

“17. From the above facts and the legal submissions, as made by the learned counsels for the parties, the following issues arise for determination and adjudication, for arriving at a just decision upon the present lis:-

(i) Whether the intent of the legislature behind insertion of Section 101-A in the Act of 2013 is to release the “unutilized” acquired lands, or, its aim and object is to enable the State Government to de-notify only such lands, which become “unviable” and “non-essential” for the State Government, as acquired under the Act of 1894?

(ii) Whether the insertion of Section 101-A in the Act of 2013 can give rise to a new cause of action, in favour of the landowner concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894?

(iii) Whether the landowner concerned has a vested right to assert that the acquired land has become “unviable” and “nonessential”, on the ground, that the land has not been utilized, or, the land continues to be his possession, even after pronouncement of the award ?

27. Though Section 101 of the Act of 2013, contemplated the return of the land acquired under this Act, but it mandated the said land to have remained unutilised for a period of five years from the date of taking over the possession. Moreover, this provision is applicable only to

the lands acquired under the Act of 2013, but, it does not have any applicability qua the lands acquired under the Act of 1894.

28. Therefore, faced with the impediment of de-notification of the lands acquired under the Act of 1894, the State legislature inserted the provisions of Section 101-A in the Act of 2013, through Haryana Act No.21 of 2018, thereby empowering the acquiring authority/State Government to denotify the lands acquired under the Act of 1894, acquisition proceedings whereof stand lawfully terminated, but only if such lands have become “unviable” or “non-essential”. However, at this stage, we are not examining the constitutional validity of insertion of Section 101-A in the principal Act, through the State Amendment Act (supra), leaving this issue to be decided in an aptly instituted lis.

29. Section 101-A has been inserted by the State legislature only with the intent to protect the State Government/acquiring authority from the saving effect of Section 6 of the Act of 1897 and that protection is available only in the circumstances, when the acquired land has become “unviable” and “nonessential” for any public purpose.

30. The combined effect of Section 114 of the Act of 2013 and Section 6 of the Act of 1897 has limited the scope and applicability of Section 101-A. The saving, as assigned in Section 6 of the Act of 1897, would not apply to the extent hindered by Section 101-A. Therefore, the power to denotify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients, are fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form a subjective opinion, while taking into consideration the larger public interest.

*34. Furthermore, the provisions of Section 101-A does not vest any discretionary power in the State Government for de-notification of the lands, which remained unutilized for a long span, rather the only permissible ground for de-notification is “unviability” or “non-essentiality” of the acquired lands for being put to **any efficacious public purpose. (emphasis supplied)***

38. As a natural corollary of the hereinabove discussions as well as the propositions of law, as laid down by the Hon’ble Supreme Court, it can be safely concluded that the intent of the legislature, behind the insertion of Section 101-A in the Act of 2013, is not the release of unutilized

acquired lands, rather its aim and object is to empower the State Government to de-notify only such lands, which have been acquired under the Act of 1894 and which have become “unviable” and “non-essential” for it, based upon tangible evidence, for executing any “public purpose”.

44. Therefore, in the light of the legal propositions (supra), it is abundantly clear that though the landowners can approach the State Government seeking de-notification of the acquired lands, in exercise of powers conferred under Section 101-A of the Act of 2013, however, this Section does not give them any vested right to seek a mandamus for denotification of the acquired lands. A writ of mandamus can be issued only for the enforcement of any right conferred upon a person by law. In the absence of any vested right conferred by law, a mandamus cannot be passed upon the authority(ies) concerned. Therefore, we refrain ourselves from passing any mandamus upon the authority(ies) concerned to examine the representation of the petitioner-Society for de-notification of the acquired lands.

47. Once the land is lawfully acquired, it vests in the State Government/acquiring authority concerned, free from all encumbrances, and thereafter, the landowner concerned does not have any concern in respect of the user of his acquired land, i.e. whether the land has been used for the purpose for which it was acquired or for any other purpose.

49. Therefore, in view of the hereinabove elaborately made discussions, the issues, as formulated above, are reiteratedly answered in the hereinafter extracted manner:-

“QUA ISSUE NO.(I):

The intent of the legislature, behind insertion of Section 101-A in the Act of 2013, is not to release the “unutilized” acquired lands, rather its aim and object is to enable the government to de-notify only such lands, as acquired under the Act of 1894, and, which have become “unviable” and “non-essential” for facilitating any public purpose.

QUA ISSUE NO.(II):

The answer to the issue No.(ii) is also in negative. The insertion of Section 101-A does not give rise to any new cause of action, in favour of the landowners concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894.

QUA ISSUE NO.(III):

The answer to this issue is also in negative. The landowners do not have any vested right to asset that the acquired lands have become “unviable” and “non-

essential”, on the ground, that such lands have not yet been utilized, or, that such lands yet continues to be in possession of the landowners, even after pronouncement of the award.”

Final Order of this Court.

18. In aftermath, this Court finds no merit in the writ petition, the same being completely frivolous, thus is required to be dismissed with costs. Therefore, the same is dismissed with costs of Rs. 50,000/- to be forthwith deposited by the petitioner with the 'Himachal Pradesh Aapada Raahat Kosh - 2023' for mitigating the natural disaster in the State concerned.

19. Since the main cases itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

22.09.2023

kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No